BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

SEP 1 4 1994

In the Matter of)
) CC Docket No. 92-77
Billed Party Preference)
for 0+ InterLATA Calls)

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REPLY COMMENTS OF CAPITAL NETWORK SYSTEM, INC.

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SUMMARY

The record established in this proceeding reveals the emergence of a general consensus against the implementation of BPP. While there are some exceptions, consisting primarily of the few entities that stand to benefit from implementation of BPP, the overwhelming majority of commentors conclude that BPP should not be implemented. Capital Network System, Inc. ("CNS") concurs with this general consensus and urges the Commission to terminate this proceeding immediately. In lieu of adopting BPP, CNS requests that the Commission take the following steps: (1) eliminate the discriminatory billing and collection practices employed by many LECs; and (2) require AT&T to provide nondiscriminatory validation of its CIID cards to all OSPs.

The comments do not support the Commission's tentative conclusion that the benefits of implementing BPP would outweigh the costs of implementation. Instead, they demonstrate that the costs of implementing BPP would exceed the Commission's benefit estimates by a substantial margin.

The benefits of implementing BPP identified by the Commission in the FNPRM are either greatly overblown or illusory. The estimated $280 million in annual "savings" the Commission claims consumers would reap by avoiding the highest-priced OSPs would not materialize because: (1) the rate differential between the large, nationwide OSPs and small, regional OSPs has decreased in the past few years; (2) the rate differential is likely to continue decreasing in the years ahead as the highest-priced OSPs are subject to increased competitive pressures by consumers who use access codes to reach their preferred OSPs; and (3) many small, regional OSPs presently cannot charge rates at the same levels of the large, nationwide OSPs because they have higher cost structures. Moreover, the $340 million in annual "savings" the Commission estimates would result from reduced call aggregator commissions would be offset, for the most part, by: (1) a substantial increase in marketing expenses which will be necessary for many OSPs to attempt to remain viable in a BPP environment; and (2) increases in various call aggregator fees to make up for lost commissions. Finally, the tentative conclusion reached by the Commission that a number of other benefits, such as easier access to the local switched network, elimination of certain competitive advantages enjoyed by AT&T, reduction in the need for regulatory oversight of the OSP industry, and improvements in the nation's telecommunications infrastructure, would inure from implementation of BPP are not supported by the comments filed in response to the FNPRM.

The Commission's estimates concerning the costs of implementing BPP ignore many costs and grossly understate those that are not ignored. For instance, the Commission estimates that the costs to OSPs and LECs of implementing BPP would be

approximately $1.22 billion in nonrecurring charges and about $60 million in annual recurring expenses. However, the updated cost estimates provided by the commentors reveal that the actual costs to OSPs and LECs of implementing BPP would be at least $1.59 billion in nonrecurring charges and $312.9 million in annual recurring expenses. Moreover, these estimates fail to take many of the other costs of implementing BPP into consideration. These include the devastating impact BPP would have on the OSP, competitive access provider, independent pay telephone, and call aggregator industries. Accordingly, the Commission's tentative conclusion that the costs of implementing BPP would be outweighed by the benefits of implementation is clearly erroneous.

Relatedly, implementation of BPP would be confusing to the public and require the Commission to address numerous issues on which consensus among the commentors is lacking. In this regard, the comments filed in response to the FNPRM demonstrate that, because BPP almost certainly would not be available in connection with many intrastate operator service calls, the public would never know where and when BPP is available if implemented. Moreover, the comments demonstrate that, in the event BPP is implemented, the Commission may need to convene a federal/state joint board to address jurisdictional separations issues, and also would need to address the following issues on which there is no clear consensus among the commentors: (1) whether inmate facilities should be exempt from BPP; (2) whether 14-digit screening should be required; and (3) whether LEC databases should be modified to accommodate commercial credit cards.

Despite the contentions of certain commentors, imposition of rate regulation on the OSP industry, whether it be in the form of an absolute rate cap or the establishment of "benchmark" rates whereby OSPs would need to cost-justify rates above the "benchmark," would be unwise as a matter of policy and inconsistent with the Communications Act and relevant case law. First, as nondominant carriers, imposition of rate regulation on the OSPs would defy logic because OSPs by definition lack the market power necessary to charge unjust and unreasonable rates, and Commission resources therefore can be better spent addressing more pressing problems. Also, the Commission does not have authority under Section 226(h) of the Communications Act to impose the industry-wide rate regulation suggested in some of the comments, and such regulation would be inconsistent with the large body of case law, which has been developed by both the Commission and the courts, that requires the Commission to take the costs of carriers into account on an individual basis when evaluating the justness and reasonableness of their rates. Indeed, in testimony before Congress during consideration of the Operator Services legislation, the then Chief of the Commission's Common Carrier Bureau stated that comparing the rates of one carrier to the rates of a competitor, rather than focusing on the carrier's rates relative to its own costs, would be improper and perhaps unlawful because it would raise "the Fifth Amendment question of a 'taking' of property without due process of law."

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REPLY COMMENTS OF CAPITAL NETWORK SYSTEM, INC.

Capital Network System, Inc. ("CNS"), by its undersigned attorneys, hereby submits these reply comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") adopted by the Federal Communications Commission ("Commission") on May 19, 1994 in the above-captioned proceeding.[1]

I. BACKGROUND

1. On August 1, 1994, approximately 150 entities, including CNS, submitted comments in response to the FNPRM. Of these, over 50 were formal comments. The record established by these comments reveals the emergence of a general consensus against the implementation of billed party preference ("BPP"). While there are some exceptions, consisting primarily of the few entities

[1] FCC 94-117 (released June 6, 1994). On June 24, 1994, the Commission extended the deadline for filing reply comments from July 29 to August 31, 1994. Billed Party Preference for 0+ InterLATA Calls, DA 94-703 (released June 24, 1994). Later, the deadline for filing reply comments was extended again from August 31 to September 14, 1994. Billed Party Preference for 0+ InterLATA Calls, DA 94-901 (released August 18, 1994).

that stand to benefit from implementation of BPP, the overwhelming majority of commentors conclude that BPP should not be implemented. These commentors represent almost every facet of the telecommunications industry, and include a growing number of entities, such as Bell Atlantic and the Southern New England Telephone Company ("SNET"),[2/] that previously supported implementation of BPP but now oppose it. Generally speaking, these commentors demonstrate that the cost/benefit analysis contained in the FNPRM significantly overstates the benefits of implementing BPP and grossly understates the costs. Among other things, they also demonstrate that BPP, if implemented, would not be available on anything close to a uniform, nationwide basis, rendering it infeasible as a practical matter. The comments also showed that there are widely differing views on a number of other significant issues, such as how the costs of BPP should be recovered and its service configuration, that make implementation of BPP very problematic and impractical.

2. In light of these facts, CNS once again urges the Commission to terminate this proceeding. In lieu thereof, in order to make the operator services marketplace more competitive and to reduce operator service providers' costs so as to allow them to reduce their rates, CNS requests that the Commission take the steps described in its initial comments: (1) to eliminate the discriminatory billing and collection practices employed by many local exchange carriers ("LECs"); and (2) to require the American

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2/ Comments of Bell Atlantic at 2; Comments of SNET at 1.

Telephone and Telegraph Company ("AT&T") to provide nondiscriminatory validation of its Card Issuer Identifier ("CIID") cards to all OSPs, not just a select few.

II. THE COMMISSION'S COST/BENEFIT ANALYSIS IS FLAWED BECAUSE IT SIGNIFICANTLY OVERSTATES THE BENEFITS OF IMPLEMENTING BILLED PARTY PREFERENCE AND GROSSLY UNDERSTATES THE COSTS

3. In the FNPRM, the Commission estimates that the benefits resulting from implementation of BPP would be approximately $620 million a year.[3/] Offset against these benefits, the Commission estimates that the annual costs of implementing BPP would be approximately $420 million.[4/] Based on these estimates, the Commission tentatively concludes that the benefits of implementing BPP would outweigh the costs.[5/]

4. The record established in response to the FNPRM once more does not support the Commission's tentative conclusion. Instead, it demonstrates beyond any doubt that the costs of implementing BPP would exceed the Commission's estimates by a substantial margin, and that most of the benefits identified by the Commission are either overblown or completely illusory. In other words, there is no way for the Commission to conclude, based on the record evidence submitted in response to the FNPRM,

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3/ FNPRM at ¶9.

4/ FNPRM at ¶20.

5/ FNPRM at ¶37.

that mandating implementation of BPP would be in the public interest.

A. The Benefits That The Commission Claims Would Inure From Implementation Of Billed Party Preference Are Significantly Overstated Or Illusory

5. According to the Commission, the $620 million in annual benefits inuring from implementation of BPP would consist of: (1) $280 million a year in "savings" to consumers who, under BPP, would be able to avoid the highest-priced OSPs;[6] and (2) $340 million a year in "savings" by OSPs that, under BPP, probably would not have to pay aggregator commissions.[7] Most of the commentors in this proceeding find these benefits to be grossly exaggerated, and a number indicate that, because BPP has never been tested in the marketplace, the Commission's claim that BPP would provide consumers with benefits of real value is completely without substantiation.[8]

6. The estimated $280 million "savings" that the Commission claims consumers would reap by avoiding the highest-priced LECs is based on an alleged rate differential of $0.19 per minute between the three largest interexchange carriers

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[6] FNPRM at ¶11.

[7] FNPRM at ¶12.

[8] APCC notes that "it is highly significant that neither the Commission nor any party advocating BPP has expressed a willingness to put BPP to ... a true marketplace test." Comments of the American Public Communications Council ("APCC") at 2; see also Comments of the South Carolina Office of Information Resources ("South Carolina") at 6.

("IXCs"), AT&T, MCI Telecommunications Corporation ("MCI"), and Sprint Corporation ("Sprint"), and small "third-tier" OSPs like CNS.[9/] However, as a number of the commentors demonstrate, the Commission's estimates are flawed.[10/] First, the rate differential between the Big 3 and "third-tier" OSPs has decreased in the past few years, and is likely to continue decreasing for the foreseeable future.[11/] Prices of the Big 3 have been trending upward over the course of the past year,[12/] while the rates of third-tier OSPs, on average, have dropped significantly since passage of the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA").[13/]

7. Second, the ability of consumers to avoid the OSPs who may have prices higher than AT&T, MCI, and Sprint does not depend on implementation of BPP. As will be discussed in more detail below, consumers are currently able to avoid such OSPs by using access codes, and the record in this proceeding indicates that consumers are availing themselves of this opportunity with

9/ FNPRM at n. 24.

10/ Comments of AT&T at 5-8; Comments of Bell Atlantic at 4; Comments of BellSouth Telecommunications, Inc. ("BellSouth") at 6-8; Comments of the Competitive Telecommunications Association ("CompTel") at 34-37.

11/ Comments of AT&T at 6-7; Comments of BellSouth at 6; Comments of CompTel at 35.

12/ Between July 1993 and the present, each of the Big 3 has increased rates for various types of operator-assisted calling. Comments of BellSouth at 6.

13/ The Commission itself found some time ago that "the vast majority of all OSPs, large and small, charge rates that are close to the industry average," and "the average sample charge is trending downward." Final Report of the Federal Communications Commission Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990 (released November 13, 1992) ("TOCSIA Report").

increasing frequency. As such, the highest-priced OSPs, even in the absence of BPP, are already subject to considerable competitive pressure to lower their rates.

8. Third, despite the claims of at least one commentor, it cannot be assumed that the rates of OSPs which are higher than AT&T, MCI, or Sprint are unreasonably high.[14/] As CNS pointed out in its initial comments, many small OSPs have much higher cost structures than the Big 3 as a result of the discriminatory billing and collection practices of LECs and AT&T's CIID card practices and other reasons. These practices impacting their cost structures prevent them from establishing their rates at the same level as those of the Big 3.[15/]

9. With regard to the alleged "savings" OSPs would enjoy through the elimination of aggregator commissions, the general consensus among the commentors is that the Commission's "savings" estimate of $620 million is grossly overstated.[16/] The commentors generally indicate that any "savings" would be offset by: (1) a substantial increase in marketing expenses which will be necessary for many OSPs to attempt to remain viable in a BPP environment; and (2) an increase in various call aggregator fees, such as higher hotel room and airport parking charges, to make up

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14/ Comments of Sprint at 5.

15/ Comments of CNS at 26-36.

16/ Comments of APCC at 24; Comments of AT&T at 11; Comments of Bell Atlantic at 5; Comments of BellSouth at 8; Comments of CompTel at 12; Comments of the NYNEX Telephone Companies ("NYNEX") at 5; Comments of the Intellicall Companies ("Intellicall") at 18-23.

for lost commissions. Currently, the payment of commissions achieves, to a significant degree, both of these results, and it is naive for the Commission to assume, as it seems to do in the FNPRM, that most, if not all, commission "savings" will be passed on to consumers dollar for dollar. The more likely result is that these "savings" will be offset to a large extent in the manner described above.[17/]

10. In the FNPRM, the Commission purports to identify a number of other benefits that would inure from implementation of BPP. These include easier access to the local switched network,[18/] elimination of certain advantages currently enjoyed by AT&T in the OSP market,[19/] reduction in the need for regulatory oversight of the OSP industry,[20/] and improvements in the nation's telecommunications infrastructure.[21/] While these alleged benefits are not quantified in the FNPRM, they seem to have played a role in the Commission's tentative conclusion that the benefits of implementing BPP would outweigh the costs. However, based on the record established in response to the FNRPM, it is clear that these benefits already have been

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17/ CompTel indicates that the Commission overestimates the amount of commission "savings" by $143 million. Comments of CompTel at 12. AT&T indicates that "it is reasonable to assume that most, if not all, current commission 'costs' will continue to be incurred under BPP, in some form." Comments of AT&T at 14.

18/ FNPRM at ¶10.

19/ FNPRM at ¶15.

20/ FNPRM at ¶16.

21/ FNPRM at ¶17.

realized, or could be realized, without mandating implementation of BPP.

11. It is doubtful whether the record would support a finding that BPP, if implemented, would facilitate access to the local switched network. To be sure, there are a number of commentors which claim, generally without any empirical basis, that consumers would find "0+" dialing under BPP a more convenient way of accessing their preferred OSP than using access codes.[22] While this may be true, the record also contains abundant evidence that consumers have become accustomed to, and are making increasing use of, access codes.[23] For example, APCC indicates in its comments that, based on a survey of several thousand pay telephones, more than 60 percent of interstate operator-assisted calls were made using access codes,[24] and Bell Atlantic states that it recently made a study of dial-around calls made from its pay telephones and discovered that more than 55 percent of such calls were made using access codes.[25]

22/ Comments of the Ameritech Operating Companies ("Ameritech") at 6; Comments of GTE Service Corporation ("GTE") at 4; Comments of MCI at 3; Comments of the National Association of State Utility Consumer Advocates ("NASUCA") at 2; Comments of Southwestern Bell Telephone Company ("SWBT") at 5; Comments of Sprint at 10-12.

23/ Comments of the American Council on Education ("ACE") at 2; Comments of America's Carriers Telecommunications Association ("ACTA") at 3; Comments of APCC at 21-24; Comments of Bell Atlantic at 7-10; Comments of BellSouth at 3-5; Comments of CompTel at 33-34; Comments of Intellicall at 4; Comments of NYNEX at 3-5; Comments of Oncor Communications, Inc. ("Oncor") at 5-6; Comments of South Carolina at 3; Comments of the Rochester Telephone Corporation at 1; Comments of the Teleport Communications Group, Inc. ("Teleport") at 3; Comments of Teltrust, Inc. ("Teltrust") at 11.

24/ Comments of APCC at 4.

25/ Comments of Bell Atlantic at 8.

Moreover, because implementation of BPP is likely to add at least $0.11 to $0.16 to the cost of every "0+" call,[26] it is unlikely that, given these costs and the widespread acceptance of access codes, many consumers would favor "0+" calling over use of access codes if they were required to pay for such purported "convenience."[27] Indeed, the proponents of BPP admit as much in their comments by conceding that some form of dial-around prohibition probably would be necessary if BPP is implemented so as to prevent consumers from using access codes to avoid paying for BPP.[28]

12. As for the Commission's claim that BPP would eliminate many of the competitive advantages currently enjoyed by AT&T, CNS reaffirms the points it made in its comments concerning this issue. Specifically, if the Commission is genuinely concerned about the advantageous competitive position occupied by AT&T, it should restrict use of AT&T's CIID card to access code calling, or in the alternative, to require that AT&T provide all OSPs with nondiscriminatory access to the validation information necessary to complete calls made using its CIID cards.[29] This would be a

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[26] Comments of Ameritech at 16 (dated July 7, 1992) (estimating a per-call cost increase of $0.16); Comments of BellSouth at 12 (dated July 7, 1992) (estimating a per-call cost increase of $0.11); Comments of NYNEX at 17 (dated July 7, 1992) (estimating a per-call cost increase of $0.14).

[27] According to Ameritech, consumers "prefer to dial 0+, but only if that dialing routine gets them access to reasonably priced services. They are not typically interested in paying a premium to dial fewer digits." Comments of Ameritech at 8.

[28] Comments of APCC at 23-24.

[29] Comments of CNS at 35-36.

far less costly and controversial way of eliminating AT&T's advantages than mandating implementation of BPP.[30]

13. The Commission's assertion that implementation of BPP might produce benefits by decreasing the amount of regulatory oversight required of the OSP industry is highly speculative.[31] Reductions in the resources required to "police" the OSP industry would only materialize if current regulatory burdens are greater than the regulatory burdens which would exist if BPP is implemented. This is unlikely to be the case. For one thing, the number of certain types of complaints filed with the Commission against OSPs have decreased significantly since TOCSIA was enacted and the Commission's rules issued thereunder.[32] Also, the regulatory burdens associated with implementation of BPP are likely to be much greater than the regulatory burdens associated with the well-established and well-known requirements of TOCSIA.

14. Finally, mandating implementation of BPP is unlikely to result in infrastructure enhancements as suggested by the Commission in the FNPRM because none of the commentors currently

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30/ Comments of BellSouth at 10; Comments of Oncor at 19.

31/ Comments of APCC at 27-28; Comments of BellSouth at 11-12.

32/ CompTel indicates in its comments that the number of informal complaints submitted to the Commission concerning call blocking has decreased by 50 percent since 1992. Comments of CompTel at 34. Because BPP is intended in large measure to enable consumers to reach their preferred OSP, the assertion that imposition of BPP reduce the Commission's regulatory costs is highly dubious. See Comments of APCC at 27-29.

know of any use for BPP technology other than to offer BPP.[33] Rather, CompTel and others identify a whole host of new technologies and services that would be incompatible with BPP: (1) voice recognition call processing technology for collect and third-party-number-billed calls; (2) use of voice personal identification numbers on calling card calls; (3) "0+" voice mail and message forwarding; (4) personal speed dialing; (5) "0+" access to information databases; and (6) use of commercial credit cards to charge "0+" calls.[34] In addition, SNET indicates that mandating implementation of BPP would require carriers to divert scarce capital away from the development and deployment of other new technologies and services, which may be needed to satisfy more pressing customer demands and wider market requirements, in order to implement BPP.[35]

B. The Costs Of Implementing Billed Party Preference Identified By The Commission Ignores Many Expenses And Significantly Understates Those That Are Not Ignored

15. In the FNPRM, the Commission estimates that the overall costs to both LECs and OSPs of implementing BPP will be approximately $1.22 billion in nonrecurring charges and about $60

33/ Comments of Ameritech at 9; Comments of NYNEX at 8; Comments of GTE at 12; Comments of SWBT at 7.

34/ Comments of CompTel at 29.

35/ Comments of SNET at 9.

million in annual recurring expenses.[36] When the nonrecurring charges are amortized over a five year period, the total costs of implementing BPP, according to the Commission, would be approximately $420 million a year.[37] Because this figure is less than the aforementioned $620 million in annual benefits the Commission claims would inure from implementation of BPP, the Commission tentatively concludes in the FNPRM that, based on the available data, the costs of implementing BPP are outweighed by the benefits.[38]

16. When calculating these cost estimates, however, the Commission itself recognized that the data underlying the estimates were stale and imprecise[39] and, therefore, asks in the FNPRM that the OSPs and LECs provide more current cost estimates if possible.[40] In their comments, many LECs respond to the Commission's request and provide more current data. Based on these updated cost estimates, it is clear that the costs of implementing BPP will greatly exceed the estimates contained in

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36/ Specifically, the Commission estimates that the costs to LECs of implementing BPP would be approximately $1.1 billion in nonrecurring charges and about $60 million in annual recurring expenses. When these costs are added to the Commission's estimate of what it likely would cost OSPs to implement BPP, $120 million, the total costs of implementing BPP would be approximately $1.22 billion in nonrecurring charges and about $60 million in annual recurring expenses. FNPRM at ¶ 20.

37/ This estimate includes $320 million a year in amortized LEC charges, $60 million a year in recurring LEC expenses, and $35 million a year in amortized OSP charges for an overall cost of approximately $420 million a year. FNPRM at ¶ 20.

38/ FNPRM at ¶ 37.

39/ FNPRM at ¶ 20.

40/ FNPRM at ¶ 37.

the FNPRM. Moreover, it is clear that the Commission's cost estimates failed to consider, or grossly underestimated, a number of other costs which would result from implementation of BPP.

17. The comments of Ameritech, Bell Atlantic, BellSouth, the Cincinnati Bell Telephone Company ("Cincinnati Bell"), GTE, NYNEX, SNET, Sprint, SWBT and the United States Telephone Association ("USTA") all contain updated LEC cost estimates.[41] However, neither the Pacific and Nevada Bell Telephone Companies ("PacBell") nor any of the OSPs that filed comments provide any updated estimates of LEC costs, and US West, Inc. ("US West") did not file comments. The following table summarizes the updated data contained in the comments:

[41] Comments of Ameritech at 10; Comments of Bell Atlantic at 12; Comments of BellSouth at 14-15; Comments of Cincinnati Bell at 5; Comments of GTE at 7-10; Comments of NYNEX at 8; Comments of SNET at 6; Comments of Sprint at 27-32; Comments of SWBT at 6; Comments of USTA at 4.

	Nonrecurring Costs	Annual Recurring Expenses
Ameritech	$103.8 million	$35.2 million
Bell Atlantic	$135 million	$9 million
BellSouth[42]	$104 million	$34.1 million
Cincinnati Bell	$9 million	$7.8 million
GTE[43]	$182.9 million	$52.6 million
NYNEX	$120.4 million	$23.1 million
PacBell[44]	$144.4 million	$43.6 million
SNET[45]	$33 million	$14 million
Sprint	$49.6 million	-$.7 million
SWBT[46]	$134.9 million	$16.5 million
USTA[47]	$318 million	$10.5 million
US West[48]	$139.1 million	$67.2 million
TOTAL	$1.47 billion	$312.9 million

42/ BellSouth's comments also contain slightly lower cost estimates of $100 million in nonrecurring charges and $29 million in annual recurring expenses. These lower cost estimates would apply if BellSouth does not have to provision BPP for any independent LECs. Comments of BellSouth at 15.

43/ GTE's comments also contain significantly lower cost estimates of $62.8 million in nonrecurring charges and $52.3 million in annual recurring expenses. These cost estimates would apply if the Commission does not: (1) require the deployment of OSS7 technology in all end offices; (2) mandate the use of 14-digit screening; and (3) exempt inmate facilities from compliance with BPP. Comments of GTE at 7-10.

44/ PacBell's comments, as indicated above, do not contain any updated cost estimates. The cost estimates attributed to PacBell in the table were taken from its ex parte filing dated July 6, 1993. PacBell ex parte filing (dated July 6, 1993). As far as CNS is aware, this is the most current cost estimate available from PacBell.

45/ SNET's comments indicate that the total cost to it of implementing BPP would exceed $33 million by a "substantial margin." However, because $33 million is the only estimate contained in SNET's comments, that estimate is included in the table. Comments of SNET at 6.

46/ SWBT's comments also contain lower cost estimates of $118.9 million in nonrecurring charges and $15.3 million in annual recurring expenses. The lower cost estimates would apply if the Commission does not mandate use of 14-digit screening. Comments of SWBT at 6.

47/ USTA's comments contain the cost estimates of implementing BPP for most independent LECs. Comments of USTA at 4.

48/ US West, as indicated above, did not file comments. The cost estimates attributed to US West in the table were taken from its August 10, 1993 ex parte filing. US West ex parte filing (dated August 10, 1993). As far as CNS is aware, this is the most current cost estimate available from US West.

While the totals indicated in the table for nonrecurring and recurring costs are staggering,[49] and greatly exceed the $1.22 billion estimate contained in the FNPRM, it is important to note that the table does not contain the $120 million that the Commission calculated in the FNPRM it would cost OSPs to implement BPP.[50] In fact, when the cost estimates of the OSPs are added to the $1.47 billion total contained in the table, the total costs to LECs and OSPs of implementing BPP would exceed $1.59 billion.[51] At the very least, it is clear that, based on the updated cost estimates contained in the comments, the costs to LECs and OSPs of implementing BPP would exceed the 1.22 billion estimate contained in the FNPRM by a substantial amount.

18. As evidenced by the table, one of the reasons for the general increase in LEC cost estimates is that many LECs include a number of expenses in their updated estimates, including balloting costs, overhead loading factors, and the costs of providing both 14-digit screening and commercial credit card verification, which were not included in the FNPRM's cost estimates. Based on the tentative conclusions reached in the

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49/ While some of the updated cost estimates are lower than those previously provided the Commission, most were significantly higher. Some of the reasons for the general increase in LEC cost estimates are discussed below.

50/ As indicated above, none of the comments filed by OSPs contain updated cost estimates. Accordingly, the $120 million estimate contained in the FNPRM is the most current estimate presently available of what it would cost OSPs to implement BPP. However, based on the general increase in LEC estimates, it is likely that the costs to OSPs of implementing BPP - not to mention the costs to PacBell and US West which have not been updated since last summer - also would be higher than the Commission estimated in the FNPRM.

51/ Adding the Commission's $120 million cost estimate for OSP implementation of BPP to the $1.47 billion total contained in the table results in an aggregate cost of $1.59 billion.

FNPRM, it appears that some or all of these additional costs will be imposed on LECs if the Commission adopts BPP. For this reason, some of the LEC cost estimates listed in the table which were not updated to include these costs would need to be before a realistic estimate of what it would cost to implement BPP can be determined.

19. To put some of these cost estimates into perspective, Cincinnati Bell indicates in its comments that, during 1997 when the Commission tentatively concludes LECs should begin offering BPP, the costs to it of offering BPP would be equal to 30 percent of its 1993 net income and 89 percent of its 1993 operator service income.[52/] Similarly, the comments of the Anchorage Telephone Utility ("Anchorage") indicate that requiring it to provide BPP may necessitate the transport of its operator service traffic over a thousand miles to an OSS7-equipped LEC in the continental United States.[53/] Obviously, mandating imposition of BPP would have a deleterious impact on these and the multitude of similarly situated independent LECs.

20. Even though the actual costs of implementing BPP are enormous, it is important to note that mandating implementation of BPP also would entail other unquantifiable but nevertheless real costs. These are the harmful effects that BPP would have on the OSP industry, competitive access providers ("CAPs"), independent pay telephone providers ("IPPs"), and call

52/ Comments of Cincinnati Bell at 2.

53/ Comments of Anchorage at 2.

aggregators. As CNS explained in its comments, implementation of BPP would devastate the OSP industry by driving many small and/or regional OSPs out of business and, thereby, create an oligopoly in which only a small handful of large, nationwide OSPs would survive.[54/] Other comments confirmed CNS's contention.[55/] For instance, the comments of Teltrust indicate that if BPP were implemented, rather than refocusing its energies on consumers, it will focus its "energies on issuing pink-slips to its employees."[56/]

21. The record established in this proceeding is also replete with evidence that mandating implementation of BPP would harm CAPs, IPPs, and call aggregators. In this regard, both MFS Communications Company, Inc. ("MFS") and Teleport submitted comments in response to the FNPRM which claim that BPP, if implemented, would create a new LEC bottleneck and undermine emerging local exchange competition.[57/] Likewise, the comments filed by a number of IPPs indicate that implementation of BPP, by depriving them of commission payments, would harm their industry and result in a significant decrease in the availability to the public of independent pay telephones.[58/] Finally, the comments

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54/ Comments of CNS at 11-16.

55/ Comments of CompTel at 15; Comments of Intellicall at 24; Comments of Teltrust at 6.

56/ Comments of Teltrust at 9.

57/ Comments of MFS at 3-8; Comments of Teleport at 8-11.

58/ Comments of Airports Association Council International at 8; Comments of the North Carolina Payphone Association ("NCPA") at 1; Comments of Teltrust at 10.

of various call aggregators make clear that the elimination of aggregator commissions, rather than representing a "savings" as indicated by the Commission, would require aggregators to recoup those lost payments through increased prices on their other services.[59/]

III. IMPOSITION OF BILLED PARTY PREFERENCE WOULD BE CONFUSING TO THE PUBLIC AND REQUIRE THE COMMISSION TO RESOLVE NUMEROUS CONTROVERSIAL ISSUES ON WHICH CONSENSUS AMONG THE COMMENTORS IS LACKING

22. In addition to the comments addressing the Commission's cost/benefit analysis, many of the comments cover a number of other issues raised by the Commission in the FNPRM. The comments on these issues provide further grounds for not mandating BPP, and demonstrate that, in the event BPP were to be implemented, there are numerous difficult issues which would require further substantial attention by the Commission.

23. In the FNPRM, the Commission notes in the FNPRM that BPP, if implemented, must be available on a uniform, nationwide basis or it will cause enormous confusion for callers.[60/] However, as CNS made clear in its comments, it is unlikely that BPP will be available on a uniform, nationwide basis because the

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59/ South Carolina indicates that it received almost $4 million in fiscal year 1992-93 and over $4.3 million in fiscal year 1993-94 from commission payments. These payments help fund various programs of South Carolina's colleges and universities and, if lost, would have to be recouped in other ways that would impact on the state's educational mission. Comments of South Carolina at 5; see also Comments of ACE at 3.

60/ FNPRM at ¶ 47.

Commission lacks jurisdiction under the Communications Act of 1934 ("Act"), to compel use of BPP in connection with the provision of intrastate operator services.[61] Many commentors made similar points in their comments.[62] For example, NYNEX explains that state utility commissions in its region probably will not adopt BPP for intraLATA calls.[63] GTE, one of the few proponents of BPP, acknowledges: "the worst scenario would be for each state utility commission [to order] its own unique version of intraLATA call processing."[64]

24. The Commission also tentatively concludes in the FNPRM that consumers who do not affirmatively chose a "0+" carrier through the Commission's proposed balloting procedures automatically would be defaulted to their "1+" carrier. Because the "1+" market is dominated by AT&T, MCI, and Sprint, CNS argued in its comments that this proposal, if adopted, would enable them to consolidate their control over the OSP industry in an oligopolistic manner.[65] Again, numerous commentors confirmed CNS's analysis. As Intellicall puts it, the proposal to default consumers to their "1+" carrier would "assure that most

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61/ Comments of CNS at 18.

62/ Comments of CompTel at 20; Comments of GTE at 6; Comments of the National Association of Utility Regulatory Commissioners ("NARUC") at 5; Comments of NYNEX at 5; Comments of Oncor at 24.

63/ Comments of NYNEX at 5.

64/ Comments of GTE at 6.

65/ CNS Comments at 14.

OSPs - virtually all OSPs without a 1+ base - will have their existing market shares handed, on a silver platter, to 1+ carriers."[66]

25. Moreover, there is disagreement among the commentors on a large number of issues, and the Commission would need to address them before BPP can be implemented. These include whether inmate facilities should be exempt from BPP,[67] whether 14-digit screening should be required,[68] and whether LEC databases should be modified to accommodate commercial credit cards.[69] CNS believes that the large number of comments filed by inmate facilities and law enforcement agencies opposing implementation of BPP demonstrates that those facilities should be exempt from BPP if implemented. As for 14-digit screening and commercial credit cards, CNS believes that, in the event BPP is implemented, 14-digit screening would be necessary to ensure that all OSPs have the ability to offer line number calling cards and that LECs should be required to validate "0+" calls made with commercial credit cards and all other calling cards.

26. Finally, NARUC and the state regulators contend that, in the event BPP is implemented, the Commission should convene a federal/state joint board to avoid having an inappropriate

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[66] Comments of Intellicall at 24.

[67] Comments of AT&T at 25-26; Comments of the Idaho Public Utilities Commission ("Idaho") at 4; Comments of PacBell at 3; Comments of South Carolina at 8; Comments of SWBT at 12.

[68] Comments of CompTel at 7; Comments of NYNEX at 9; Comments of Oncor at 8; Comments of USTA at 12.

[69] Comments of MCI at 7; Comments of Oncor at 10.